

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

CAPELLA PHOTONICS, INC.,

Plaintiff

v.

FUJITSU NETWORK
COMMUNICATIONS, INC.,

Defendant.

Civil Action No. 2:20-cv-00076-JRG

JURY TRIAL DEMANDED

**DECLARATION OF NATHANIEL T. BROWAND IN SUPPORT OF FUJITSU
NETWORK COMMUNICATIONS, INC.'S MOTION TO TRANSFER VENUE**

I, Nathaniel T. Browand, hereby declare as follows:

1. I am an attorney at the law firm of Milbank LLP and am counsel for Defendant Fujitsu Network Communications, Inc. (“FNC”) in this lawsuit.

2. I respectfully submit this declaration in support of FNC’s Motion to Transfer Venue Pursuant to 28 U.S.C. § 1404(a). I declare that the following statements are true to the best of my knowledge, information, and belief, formed after a reasonable inquiry under the circumstances.

3. Attached as Exhibit 1 hereto is a true and correct copy of U.S. Patent No. RE47,905.
4. Attached as Exhibit 2 hereto is a true and correct copy of U.S. Patent No. RE47,906.
5. Attached as Exhibit 3 hereto is a true and correct copy of U.S. Patent No. RE42,368.
6. Attached as Exhibit 4 hereto is a true and correct copy of U.S. Patent No. RE42,678.
7. Attached as Exhibit 5 hereto is a true and correct copy of Dkt. No. 18-1, entitled

Plaintiff Capella Photonics, Inc.’s Corrected Amended Complaint for Patent Infringement and

Demand for Jury Trial (Mar. 24, 2014), from *Capella Photonics, Inc. v. Fujitsu Network Communications, Inc.*, Civil Action No. 1:14-cv-20531 (S.D. Fla.).

8. Attached as Exhibit 6 hereto is a true and correct copy of Dkt. No. 66, entitled Order Granting Defendants' Motions to Transfer (July 23, 2014), from *Capella Photonics, Inc. v. Fujitsu Network Communications, Inc.*, Civil Action No. 14-cv-20531 (S.D. Fla.).

9. Attached as Exhibit 7 hereto is a true and correct copy of Dkt. No. 172, entitled Order Granting Cisco's Motion to Stay Consolidated Cases Pending *Inter Partes* Review of Patents-in-Suit (Mar. 3, 2015), from *Capella Photonics, Inc. v. Cisco Sys., Inc. et al.*, Civil Action No. 14-03348 (N.D. Cal.).

10. Attached as Exhibit 8 hereto is a true and correct copy of Dkt. No. 219, entitled Order Denying Plaintiff's Motion to Stay, Denying Plaintiff's Motion to Amend Infringement Contentions, and Denying Defendants' Motion to Dismiss (Jun. 4, 2019), from *Capella Photonics, Inc. v. Cisco Sys., Inc. et al.*, Civil Action No. 14-03348 (N.D. Cal.).

11. Attached as Exhibit 9 hereto is a true and correct copy of Dkt. No. 1, entitled Complaint for Declaratory Judgment Relief (Mar. 16, 2020), from *Cisco Sys., Inc. v. Capella Photonics, Inc.*, No. 20-01858 (N.D. Cal.).

12. Attached as Exhibit 10 hereto is a true and correct copy of Dkt. No. 26, entitled First Amended Complaint for Declaratory Judgment Relief (June 1, 2020), from *Cisco Sys., Inc. v. Capella Photonics, Inc.*, No. 20-01858 (N.D. Cal.).

13. Attached as Exhibit 11 hereto is a true and correct copy of a result webpage of a search for "Capella Photonics" on the California Secretary of State's "Business Search" webpage located at <http://businesssearch.sos.ca.gov/>, accessed August 25, 2020. Exhibit 11 shows that

Capella Photonics, Inc. is a Delaware entity, with an address at 1100 La Avenida Street Mountain View, CA 94043.

14. Attached as Exhibit 12 hereto is a true and correct copy of Capella's April 2, 2020 Statement of Information, available as a result webpage of a search for "Capella Photonics" on the California Secretary of State's "Business Search" webpage located at <http://businesssearch.sos.ca.gov/>, accessed August 3, 2020.

15. Attached as Exhibit 13 hereto is a true and correct copy of Capella's Management Team webpage from January 26, 2013 (most recent date available), archived at archive.org, available at <https://web.archive.org/web/20100218065654/http://www.capellainc.com/about/management.htm>, accessed August 25, 2020. Exhibit 13 lists Capella's management team as including: (1) Larry Schwerin (former CEO); (2) Bruce Gray (former President); (3) George Berberis (former COO); (4) Rafael Torres (former CFO); and (5) Harvey Trop (former VP, Quality & Reliability).

16. Attached as Exhibit 14 hereto is a true and correct copy of results of a LexisNexis Public Records search for the current address of Steve Reale, accessed August 24, 2020.

17. Attached as Exhibit 15 hereto is a true and correct copy of results of a LexisNexis Public Records search for the current address of Larry Schwerin, accessed August 24, 2020.

18. Attached as Exhibit 16 hereto is a true and correct copy of results of a LexisNexis Public Records search for the current address of Rafael Torres, accessed August 24, 2020.

19. Attached as Exhibit 17 hereto is a true and correct copy of results of a LexisNexis Public Records search for the current address of Harvey Trop, accessed August 24, 2020.

20. Attached as Exhibit 18 hereto is a true and correct copy of results of a LexisNexis Public Records search for the current address of Christopher B. Lucas, accessed August 24, 2020.

21. Attached as Exhibit 19 hereto is a true and correct copy of results of a LexisNexis Public Records search for the current address of Bruce Gray, accessed August 24, 2020.

22. Attached as Exhibit 20 hereto is a true and correct copy of results of a LexisNexis Public Records search for the current address of George Berberis, accessed August 24, 2020.

23. Attached as Exhibit 21 hereto is a true and correct copy of results of a LexisNexis Public Records search for the current address of Jeffrey P. Wilde, accessed August 24, 2020.

24. Attached as Exhibit 22 hereto is a true and correct copy of results of a LexisNexis Public Records search for the current address of Joseph E. Davis, accessed August 24, 2020.

25. Attached as Exhibit 23 hereto is a true and correct copy of results of a LexisNexis Public Records search for the current address of Tai Chen, accessed August 24, 2020.

26. Attached as Exhibit 24 hereto is a true and correct copy of Plaintiff Capella Photonics, Inc.'s Initial and Additional Disclosures Pursuant to Paragraphs 1 & 3 of the Discovery Order, served August 10, 2020, in this lawsuit.

27. Attached as Exhibit 25 hereto is a true and correct copy of Capella's Disclosure of Asserted Claims and Infringement Contentions to Fujitsu Network Communications, Inc., served July 27, 2020, in this lawsuit.

28. Attached as Exhibit 26 hereto is a true and correct copy of Fujitsu Network Communications, Inc.'s Initial and Additional Disclosures, served August 10, 2020, in this lawsuit.

29. Attached as Exhibit 27 hereto is a true and correct copy of a webpage entitled Contact Us Lumentum Operations LLC, at <https://www.lumentum.com/en/company/contact-us>, accessed August 25, 2020. Exhibit 27 states that Lumentum Operations LLC is headquartered in San Jose, California.

30. Attached as Exhibit 28 hereto is a true and correct copy of a press release entitled II-VI Incorporated Expands Compound Semiconductors and Photonic Solutions Platforms with the Completion of the Finisar Acquisition, at https://www.ii-vi.com/wp-content/uploads/2019/09/IIVI_FNSR_20190924_Merger_Close_Final.pdf, accessed August 25, 2020. Exhibit 28 states that Finisar Corporation is headquartered in Sunnyvale, California.

31. Attached as Exhibit 29 hereto is a true and correct copy of Dkt. No. 48, entitled Order Granting Plaintiff's Motion for Judgment on the Pleadings (Aug. 21, 2020), from *Cisco Sys., Inc. v. Capella Photonics, Inc.*, No. 20-01858 (N.D. Cal.).

32. Attached as Exhibit 30 hereto are true and correct copies of (1) a webpage showing the Jurisdiction Map for the United States District Court, Northern District of California available at <http://www.cand.uscourts.gov/jurisdictionmap>, accessed August 25, 2020; and (2) results webpages of searches for “Mountain View”, “Fremont”, “San Jose”, “Sunnyvale”, “Los Altos”, “Morgan Hill”, “Saratoga”, “El Dorado Hills”, and “Corte Madera” in “California” on StatsAmerica’s City-to-County Finder webpage located at <http://statsamerica.org/CityCountyFinder/Default.aspx>, accessed August 25, 2020. Exhibit 30 states that the following counties are in the Northern District of California: Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Monterey, Napa, San Benito, San Francisco, San Mateo, Santa Clara, Santa Cruz, and Sonoma. Exhibit 30 also shows that Mountain View, Los Altos,

Morgan Hill, Mountain View, San Jose, Saratoga, and Sunnyvale are in Santa Clara County; Fremont is in Alameda County; and Corte Madera is in Marin County.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: August 31, 2020

Respectfully submitted,

/s/ Nathaniel T. Browand
Nathaniel T. Browand

CERTIFICATE OF SERVICE

I hereby certify that counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3) on August 31, 2020.

By: /s/ Nathaniel T. Browand
Nathaniel T. Browand